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BLACK MARKETING IN KOREA: CONSIDERATIONS FOR DETERRENCE

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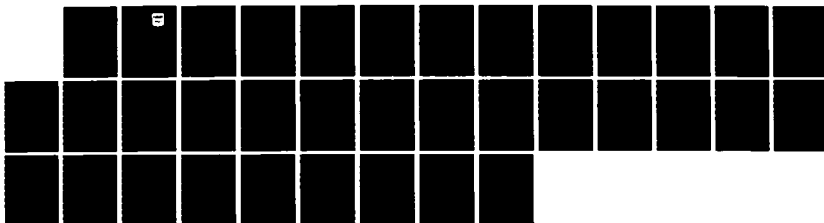
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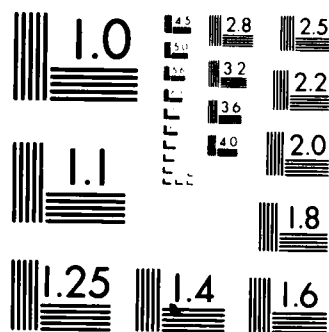
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BLACK MARKETING IN KOREA: CONSIDERATIONS FOR DETERRENCE

BY

COLONEL WILLIAM P. GREENE, JR.

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USAWC MILITARY STUDIES PROGRAM PAPER

BLACK MARKETING IN KOREA: CONSIDERATIONS FOR DETERRENCE

Individual Essay

by

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ABSTRACT

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Many soldiers assigned overseas are committing the offense of black marketing and ruining their careers. This crime is easy to commit because soldiers succumb to temptations of getting rich quickly and are often ignorant of the law or regulations involved. A review of US Forces Korea regulations governing ration control and buying, selling or transferring duty free goods, helps in establishing ways to reverse this trend. This examination attempts to define black marketing, to profile the black marketer and to develop ways to deter soldiers from committing this offense. It is concluded that strengthened enforcement and modification of regulatory policies or procedures, aggressive criminal investigation, rigorous prosecution and dynamic command information programs, will assist in deterring offenders and lead towards the demise of black marketing.

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I. INTRODUCTION

It has become apparent that thousands of soldiers assigned in overseas commands have been court-martialed for engaging in black market activities.¹ Despite aggressive law enforcement efforts and positive command actions, black marketing has become a crime endemic to military society. Today, it joins crimes of violence, crimes against property, and drug offenses in command military justice discussions. At a time when other crime rates are dropping, black marketing incidents are continuing at a steady pace. Indeed, approximately sixty-five percent of the courts-martial tried in Korea last year involved black market offenses.² The majority of nonjudicial punishments imposed were for soldiers engaging in the black market. Notwithstanding aggressive publicity programs aimed towards warning soldiers of the illegality of black marketing, criminal investigative and apprehension reports dominate daily military police blotters. Simply put, many soldiers of all ranks can compromise an otherwise outstanding military career by participating in black market activities.

This essay is intended to focus attention on black marketing by soldiers assigned in Korea. Black marketing offenses are prevalent in the Republic of Korea. Many soldiers assigned to the 2d Infantry Division have been disciplined for committing these offenses. The author's experience in dealing with this offense as the Division Staff Judge Advocate assists in examining black market activity. Therefore, this essay seeks to define the crime, to identify the perpetrators, and to examine briefly how black marketing is detected, investigated and

prosecuted. Most of all, its purpose is to offer ideas that may assist in deterring soldiers from committing this crime.

II. BLACK MARKETING EXAMINED

A. Definition

The West Commercial Law Dictionary defines black marketing as "illegally trading, buying, and selling goods which are subject to government rationing or control, including contraband."³ These illegal acts have been called black market because of their identification with illegal activities occurring under cover or secretly.⁴

Historically in the United States, illegally trading, buying and selling goods intended for military use can be traced to illegal profiteering during the Revolutionary War. Similarly, the wrongful trading between sutlers or trading post agents and Indians can be considered part of the black market progeny. Often, these camp followers traded whiskey, rifles, or other provisions to the Indians for valuable furs and skins. This form of profiteering or unauthorized trading to achieve economic advantages could be the forerunner of what would become the black market phenomena.

The term black market originated in Europe during World War I. Once rationed items were introduced in belligerent countries, some persons with access to these items and others supplies became tempted to enrich themselves by selling unrestricted quantities at inflated prices.^{4a}

During World War II, the United States government issued regulations forbidding businesses, contractors or others from securing commodities above a fixed price. The government also placed economic controls on essential goods and materials in short supply.

Circumventing these price and ration controls was called black market in the civilian community. 4b

The rationed military and non-military goods and materials required for conducting war soon became the fruit of black marketing. If a soldier were assigned to countries having desperate shortages of food and consumer goods, tempting opportunities existed to sell, trade or otherwise transfer military supplies and equipment wrongfully. Military supplies and equipment have high economic and social value under these conditions and high prices or services are offered to obtain them. As an example, some American soldiers in occupied Germany discovered that a carton of cigarettes could be sold for a high price or could become payment for sex. Coffee, candy and other scarce foodstuffs were likewise sold for a profit.⁵ Servicemen in the Far East also discovered the same questionable opportunities. These so called opportunities remained after World War II and prevailed during the Korean and Vietnam conflicts.

Selling stolen military property for profit became a new facet of black marketing in Korea and Vietnam. Graft and corruption also became relatively common.⁶ Servicemen in Vietnam had a captive group of indigenous customers. Large profits were being made through illegal exploitation of the duty free goods well stocked on shelves in military exchanges and commissaries. These profits also stimulated illegal currency exchanges involving military pay certificates. These crimes were substantially deterred by zealous law enforcement, decisive command regulations and vigorous prosecution.⁷

Currently our armed forces are deployed in several countries worldwide to protect our national interests and to promote world peace. To

sustain these forces, military supplies and equipment, consumer goods, and large amounts of personal property are brought into these countries duty-free. Through agreements known as Status-of-Forces-Agreements, or SOFA, the host countries and the United States contract to cooperate in enforcing customs laws involving these duty free goods. Further, the United States agrees to control or ration imported goods that are for the exclusive use of its servicemembers, civilian components and their dependents.

Accordingly, every overseas commander having ration control or responsibility for enforcing customs laws has issued regulations governing activities involved with acquiring, possessing, and transferring duty free goods. In practice, the activities proscribed in these regulations are considered to be black marketing, or acts abetting black market activities. A brief examination of current regulations in Korea helps in describing black marketing. Once described, one may be able to find ways to deter this offense.

B. Regulations Against Black Marketing In Korea

The commander, United States Forces, Korea, has issued United States Forces Korea Regulations 27-5, 60-1, 643-1 and 643-2⁸ in response to our legal obligations in enforcing or cooperating in enforcing Korean customs laws. These obligations are found in the United States - Republic of Korea Status of Forces Agreement.⁹ These regulations are implemented to prevent abuse of the duty free privileges granted to the United States armed forces, members of such forces, the civilian component and their dependents.

USFK Reg 27-5 is a catch-all directive informing all active-duty military members of acceptable individual conduct while physically present in Korea. Naturally, this regulation requires their compliance with Korean and United States laws. Section IV of the regulation specifically covers abuse and misuse of customs and postal privileges; section V covers rules on ration control and purchase privileges. These sections list twenty-six prohibited acts. Soldiers committing these acts have been court-martialed, punished nonjudicially, or have received administrative sanctions. Additionally, section V, paragraph 19b (1) through (4) requires that military members provide proof of continuous possession of their duty free goods brought into or acquired in Korea. If the goods are no longer possessed, they must provide proof of lawful disposition. This "show and tell" provision is extremely effective in detecting black market offenders.¹⁰

USFK Reg 60-1 prescribes ration control policies in compliance with the US/ROK SOFA. It exhibits intent to comply with Korean customs law and is issued to ensure military members, civilians and their dependents retain these duty free privileges. This regulation identifies agency responsibilities, establishes rules for purchasing ration controlled goods and items, and sets quantity and individual monetary limitations. It lists eighteen prohibited acts.¹¹ Ten acts are identical or similar to the prohibited acts listed in USFK Reg 27-5. Also USFK Reg 60-1 provides commanders with punitive options for dealing with black market offenders. These options have been extracted and are listed in Appendix B. This regulation is very complete and comprehensive.

USFK Regs 643-1 and 643-2 are implemented to ensure that duty free property is transferred in accordance with the Status of Forces

Agreement (SOFA). Regulation 643-1 establishes legal ways to transfer duty free personal property between SOFA persons entitled duty free privileges. The rules on transferring similar property to persons not entitled duty free privileges are provided in Regulation 643-2. Both regulations are clear and concise. Anyone violating the rules established by USFK Regulation 643-2 is subject to Korean prosecution or administrative sanction. Military personnel are also subject to punishment under the Uniform Code of Military Justice.¹²

These regulations clearly describe the activities that are considered to be black marketing. Black marketing consists of purchasing or otherwise obtaining rationed or military goods for illegal transfer or production of income through sale, barter, or exchange. Every illegal act committed to achieve these results violates these regulations.

Good regulations are those that are specific, easily comprehensible, difficult to evade and readily enforceable. The current US Forces Korea regulations possess these characteristics. In some cases, their redundancy in listing prohibited activities makes them even more difficult to evade. They are concise and when posted and read, provide adequate notice to soldiers what conduct is expected of them in complying with customs law. They do not address unlawful dispositions of military property. Such acts are governed by other regulations and punitive articles under the UCMJ.¹³ It should be remembered however, that selling stolen military property is also a form of black marketing that must be prevented.

C. Black Market Offenders

With the black market defined, knowing who commits black marketing and why, assists in developing ways to deter future offenders. Preventive efforts are enhanced when commanders and supervisors can recognize common offender characteristics. Also, the unsuspecting innocent soldier needs an appreciation of some of the causes of falling into the black market trap.

Black marketing is democratic and does not discriminate. Everyone has a fair chance to participate. Black marketers have different modi operandi. The activities of those convicted by court-martialed or otherwise disciplined can be classified into one of four categories.¹⁴

Category 1

Professional black marketers constitute the first category. These "professionals" are middle grade noncommissioned officers (Sergeant E-5 to Sergeant First Class) with six to fifteen years service. They are married to or divorced from Korean spouses and often maintain a residence or "hooch" in the local town adjacent to a military installation (the ville). From previous tours in Korea, they know large profits are possible by engaging in the black market.

Their modus operandi is established through conducting volume business. The Korean spouse's knowledge of the language and the culture improves the business by the broader business contacts made in the Korean community. Category 1 offenders are careful not to expose themselves by purchasing beyond the authorized limitations established by USFK Reg 60-1. Instead they seek help by enticing fellow noncommissioned officers and enlisted persons into the market. Using a lost or

stolen ration control plate (RCP), which one must have to purchase duty free goods, is not uncommon for this group. Also, they attempt to seduce newly arrived soldiers with promises of "getting them rich quick" through black marketing.

Finally, these "pros" are willing to steal government property and sell it illegally. Military equipment and supplies are more usable in the civilian market than in the past. Electronic components, portable x-ray equipment, automotive spare parts and engines, and even blood plasma are in high demand. Some persons working in areas having access to this property can be pressured or tempted in becoming engaged in black market activity.

Commanders act quickly and stringently when dealing with these professional black marketers. Offenders are court-martialed and normally lose their rank, receive substantial confinement, and lose or forfeit pay and allowances.

Category 2

The second category consists of officers, warrant officers, and senior noncommissioned officers who are not category 1 type professional black marketers. Simply stated, they are taking perceived advantage of the opportunities to attain large profits. It is not unusual to find that they are supporting a Korean girlfriend, (a "yobo"), and a wife and family at the same time.

They usually are assigned in positions influencing ration control or positions having frequent access to ration controlled goods or military property. Their activities involve illegally obtaining and selling expensive items such as foreign made automobiles, stereo and

video equipment, and even deer antlers, a korean aphrodisiac. Most have Korean spouses, have been assigned more than once to Korea and normally have extended their current tour.

Offenders in this category can expect to be tried by court-martial and appropriately punished.

Category 3

Other middle grade noncommissioned officers not in category 1 belong to the third category. Their offender profile reveals they are plagued with personal financial problems and overextend themselves even more to engage in the black market. Many have not been selected for advancement and feel entrapped by "the system". Further, they are unable to adjust adequately to family separation and generally resent being assigned to Korea. They are vulnerable and are easily tempted by "get rich quick" schemes. Often, easy availability of sex for a price tempts them to supplement or produce income through black market activities.

Category 4

The members of this category may be called black marketers of opportunity and curiosity. They are young, impressionable, single men serving their initial enlistment in the army. They are prime targets for the Korean national acting as a "broker" for an affluent client seeking foreign made products. Similarly, Korean girl friends persuade them to engage in small dollar amount activity. Their preference is buying items such as liquor, cigarettes, mayonnaise, cold cream, and small electronic items and selling them to Koreans for a small profit.

Also, pawning or selling their ration control plates and then reporting them stolen is an offense often committed.

When these offenders are caught early, they can expect to receive nonjudicial punishment. If they persist in committing offenses, however, they can expect to be court-martialed.

Generally, all of these offenders have good military records. They do not have previous records of nonjudicial punishment or court-martial convictions. They are basically reliable soldiers and once reassigned elsewhere probably could serve honorably. In every general statement, there is an exception. The Category 1 professionals, especially those stealing from the government to support black market activities, can be expected to be involved in unlawful activities wherever they may be. They have been successful in not being caught.

The modi operandi described here are not all inclusive. Many soldiers have been disciplined for manipulating the system in other ways. The offenders discussed do however, represent the majority of those accused of black marketing. It should be pointed out also, that there are many fine officers, warrant officers and noncommissioned officers with Korean spouses and serving several tours in Korea who have not engaged in black marketing.

III. IMPACT OF BLACK MARKETING

It can be discerned from the foregoing discussion that the black market is a criminal economic system involving civilian collusion to subvert or circumvent military regulations and local law. It erodes positive images, violates treaties and adversely affects good order and discipline. The impact on United States armed forces has been significant. The impact on Korea, however, is not as substantial.

A. Impact On US Forces

Our soldiers must reflect favorable images in the eyes of our foreign hosts. Part of that image is portrayed by the way they conduct themselves publicly. They must obey the laws and remain accessible to their commander so that missions requiring their presence in the country, can be accomplished. Soldiers engaging in black market activities taint any favorable images achieved and disrupt good order and discipline thereby adversely affecting the ability to accomplish the mission. Military police blotters and criminal investigative reports constantly relate to soldiers being apprehended for committing this offense. Many law enforcement hours are dedicated to detecting the crime. Commanders are distracted from their regular duties in order to deal with their black market offenders. Despite these efforts, the black market attraction persists.

Despite aggressive command publicity campaigns advising soldiers how to avoid the black market traps, many are apprehended monthly. Every commander upon assuming command directs immediate attention to stopping their soldiers from committing this crime only to become

frustrated by frequent offenses. This causes some commanders to argue that the problem is indeed too big to solve. Others wish to solve it but find that available resources are insufficient. The bottom line is that the impact on U.S. Forces is great. Soldiers are getting into trouble because they are unable to resist the "ploys" used by local civilians that cause them to engage in the black market. This phenomena makes it difficult to succeed in deterring future offenders.

B. Impact On Korea

Host nations expect members of the visiting forces to comply with local laws and regulations. They exercise concurrent criminal jurisdiction over most common offenses committed by military servicemembers. Under the US/ROK SOFA, Korea waives the right to exercise jurisdiction but retains the option to recall that waiver.¹⁵ Black marketing not only violates military regulations, but also violates Korean laws. Few servicemembers, however, have been brought before Korean courts for this offense. When they are, the cases normally involve very expensive items or collusion with a notorious Korean offender. Civilians and military dependents are always subject to Korean criminal jurisdiction and have been appropriately fined or otherwise prosecuted for customs violations.

It is generally concluded that Korean authorities have not enforced their laws against Korean nationals as vigorously as the U.S. military has against soldiers.¹⁶ The resulting imbalance hinders efforts in deterring offenders. The following scenario, based upon typical or common facts from several black market offenses, illustrates this premise.

Scenario

Sergeant E-5 Warrior, assigned to the 2d Infantry Division has been in Korea for one month. He has been issued his permanent ration control plate (RCP) which authorizes him to purchase duty free items. This plate must be presented when entering an exchange or commissary. While walking in the local village, Mr. Kimo, a Korean National, approaches him and asks, "Hey GI, wanna make some extra money?" Mr. Kimo is accompanied by a pretty girl whose services are offered if Warrior goes along with the proposed plan.

Mr. Kimo is an experienced black market broker. He has affluent Korean clients willing to buy quality foreign made goods at a price less than sold on the local economy. In this instance, Mr. Kimo needs a Japanese stereo system that costs \$1000 in the post exchange. The same system costs \$1800 on the Korean economy. Wanting to make an extra \$100 and perhaps spending a romantic night with a willing woman, Warrior agrees to make the purchase. He is given \$1000 cash, a phony identification card and a stolen ration control plate. They take his picture and affix it to the identification card. Warrior enters the post exchange, presents the RCP, buys the stereo system and leaves. He is assisted by a PX taxi driver who drives him in a PX cab to a predesignated location to deliver the system. Warrior receives \$100 and goes on the town with his new friend; the client has a new stereo; and, Mr. Kimo has made \$700 and is looking for another mark. The post exchange has made another sale.

Sergeant Warrior is eventually apprehended for black market activities of his own. During interrogation, he reveals how he was initiated soon after arriving in Korea. Unlike most accused, he can readily

identify Mr. Kimo. Kimo is arrested by Korean authorities. Sergeant Warrior is convicted by general court-martial and receives a punitive discharge and substantial confinement. On the other hand, Mr. Kimo receives a fine, which he can easily pay, and is free to return to the streets to entice other vulnerable soldiers.

Staff judge advocates, prosecutors, and law enforcement authorities find that the impact on Korea is not as great as the impact on US Forces. The items often black marketed are in large demand on the local civilian economy. To an extent, it can be argued that these activities are tolerated as an economic way of life. Black marketing fills a void in the developing economy. Thus, the discussions with commanders about black marketing often boil down to questions like why should there be a disparity in treatment? Why should Sergeant Warrior be left holding the bag? To do nothing, however, would adversely impact on the ability of the commanders to accomplish their mission. The key to combatting black marketing successfully is communicating our concerns at every opportunity.¹⁷

Staff judge advocates, law enforcement authorities, and commanders must discuss the problem with their civilian counterparts. Discussions with Korean prosecutors must focus on prosecuting the Korean black marketer and seeking stiffer penalties when they are convicted. Meaningful punishment has always been considered an effective deterrent. Once the apparent source of easy money is eliminated, the soldier will not be easily tempted. Despite the disparity in punishments, the United States Armed Forces should enforce its regulation and punish offenders appropriately.

IV. CONSIDERATIONS FOR DETERRENCE

The above discussion establishes the basis for providing thoughts on methods assisting in deterring this economic crime. The following considerations are offered as methods for achieving that goal.

A. Regulatory Revision

As stated previously, the regulations are comprehensive and effective. They enforce an important U.S. Government obligation under the Status of Forces Agreement with the Korean government to minimize and control the unlawful importation of duty free items into the economy of Korea. They are drafted with sufficient clarity so that those who are subject to it are able to determine what they may or may not do.

Certain methods in executing provisions of the regulation need revised. These methods involve verifying the validity of presented ration control plates, and rapidly recording purchases of duty free goods.

Verifying the Ration Control Plate

Soldiers, newly assigned in Korea, apply for ration control privileges and eventually are issued ration control plates (RCPs).¹⁷ These cards or plates authorize them to purchase duty free goods on a controlled basis. They are similar in size to credit cards and contain identifying data embossed on the plate.

These RCPs along with an Armed Forces Identification Card are presented when entering military exchanges or commissaries. Before any purchases can be made, the information embossed on them is recorded or

anvilled onto a controlled item purchase record (USFK Form 47) by an addressograph data recorder. The purchase record is signed by the buyer and the original is provided to a ration control monitor. The purchaser keeps a copy.¹⁸ The RCP and the anvilled record are key documents in identifying irregular or illegal transactions. Therefore military members, civilians, and their dependents must take careful measures in preventing their loss or theft.

Any loss or theft of an RCP must be reported within twenty-four hours after its discovery. Failure to do so subjects violators to possible prosecution or forfeiture of the privilege.²⁰ More significantly, it is illegal to sell, pawn, or otherwise transfer an RCP.²¹ Yet, many soldiers have sold their plates for as much as \$500.²² Once in the hands of a black marketer, the use of a RCP helps extensively in black market activities. Identification cards with a picture of an offender affixed can be matched with the data on the RCP. A fraudulent presentation of this RCP allows wrongful multiple purchases of high value items that may not be discovered for months.²³ When fraudulent purchases are discovered, the records show purchases that reflect back to rightful owners of the RCPs, even though they have no knowledge of the transaction.

To prevent this, commanders and law enforcement authorities must ensure that soldiers understand their responsibilities in reporting losses. If soldiers are negligent in losing their RCP, administrative sanctions such as withdrawing, with cause, the privilege or ration card use, in whole or in part should be imposed.

To prevent soldiers from selling, pawning or otherwise illegally transferring their RCP they could be required to surrender them to unit

first sergeants or military police before leaving the military installations. This places an additional burden on the first sergeant or military police. The end result however, is eliminating the opportunity to violate that regulatory provision. Alternatively, soldiers leaving the installation could be required to sign a form stating he or she possesses their RCP. The military police can verify possession of the RCP when conducting the routine ID card check. When the soldier returns, a similar procedure verifying he or she still has the RCP can be conducted. If the soldier does not have the RCP, it is immediately reported.

In this event, the information must be reported timely. It immediately appears on military police blotters but the loss also must be entered into an automated system or central data computer bank linked to the retail facilities. A simple check by the retail facilities on any subsequent use of the reported RCP could prevent an illegal purchase.

One method that can be used in achieving real time data is replacing the current ration control plastic card with a ration control card containing a microchip. The data on the microchip can be read by hardware at the retail outlet.

Another method is changing the ration control plate to a card that is punched for particular purchases. This procedure can also decrease the frequency of violations for multiple purchases. Of course, this assumes the sales clerk or cashier punches the card. Ration control monitors sitting at the cashier counter can assist in enforcing that requirement. This system can make the regulation even harder to evade.

Finally, consideration might be given to holding a soldier pecuniarily liable for any negligent or willful act resulting in the

loss of the RCP. If a value can be placed on the plate, the regulation could be amended to require soldiers to pay for any loss before another is issued. It may reduce any profit made from selling or pawning the RCP and thereby curtail that practice.

Immediately Reporting Purchases of Duty Free Goods

The purchase control records mentioned earlier are forwarded monthly to a central processing facility by the responsible manager of a retail activity. At the processing facility, the purchases are screened to detect individual overpurchases of high value items such as stereo and video equipment or individual purchases exceeding the monthly dollar limitations. Computer printouts revealing individual purchases exceeding limits are provided to law enforcement authorities and commanders for appropriate action.²⁴

Since retail facilities deliver or cause to be delivered the purchase records monthly, there is a lag time in detecting violations. By the time the data is entered into the computer, processed, and purchase profiles prepared, sixty to ninety days from original purchase can expire. In that period of time, more purchases could be made or the offender could be reassigned to the United States. If a violator is detected before the data is entered into the computer, prosecutors encounter delays in receiving the purchase records or other documentation necessary for proving the offense.

An automated system or program is needed to report purchases immediately to the processing facility. The facility should have the capability through the program to verify authority for the purchase, report whether multiple purchases have been made, and validate or verify

the ration control plate. A system similar to the current exchange system for validating and verifying personal check cashing could be developed.

Purchase data immediately entered into and retrieved from a central data bank should substantially weaken black marketers' abilities to exceed monthly dollar and high value quantity limitations. Further, black marketers will refrain from using stolen or sold RCPs if these plates can be immediately verified or validated at the exchanges and commissaries.

B. Investigating Black Market Activities

USFK Reg 60-1 assigns responsibility to the Provost Marshal for investigating possible violations of the regulation. The efforts of the military police and the criminal investigation division (CID) have been very effective in identifying many violators. Knowing that these offenses will be aggressively investigated and successfully prosecuted, potential offenders may think twice before committing this offense or any offense.

In 1985, military police and criminal investigation division officials in Korea formed a joint black market suppression team. This team's sole responsibility was investigating this facet of economic crime including possible thefts of government property that was in high demand on the civilian economy. Their intensive efforts in reviewing purchase profiles on Category 1 and 2 black marketers which were made easy through the use of computers, produced significant results. Even though these offenders did not exceed any monthly dollar limitations or high value quantities, when asked to show and tell, they could not

produce proof of lawful disposition. These apprehensions caused alarm. It was perceived initially that black marketing was skyrocketing. However, it simply reflected the ability to detect more perpetrators.

It is recognized that forming joint suppression teams places a strain on personnel resources. This is especially true in areas having high incidents of other crime. These teams reportedly are continuing to make strides in swiftly detecting black market offenders. Every effort must be taken by commanders and key law enforcement authorities to ensure that sufficient personnel are available to continue this effective program.

C. Prosecuting Offenders

Successfully prosecuting black market offenders enhances deterrence. In Korea, most soldiers accused of black marketing plead guilty pursuant to a pretrial agreement.²⁵ These pleas are attributable to good police work and reasonable agreements. The prosecutor, however, must always be prepared to prove the charges beyond a reasonable doubt. Therefore, it is essential that the policies established by the regulation in processing purchase reports and maintaining documentation supporting those purchases are followed.

In line with successfully prosecuting the case, prosecutors must endeavor to ensure that court-martial members or military judges are provided with complete information concerning the facts and circumstances surrounding the case and the accused's background before rendering an appropriate punishment. The punishment should fit the crime. Convicted black market offenders that are unjustly enriched, or solicit others to commit the crime, should be severely punished.

The maximum punishment imposable for violating a general regulation is a dishonorable discharge or dismissal, confinement for two years and forfeiture of all pay and allowances.²⁶ The penalty can be steep. The punishments, however, range from slaps on the wrist to substantial periods in jail and punitive discharges. The difference in punishment reflects considerations of the accused's motivations, the amount of money or value of the property involved, the profit made, or any other aggravating or mitigating matters. Further, the duty to comply with the laws increases as one attains higher position, rank, or influence. It is essential to remember the value punishment has on deterrence. It helps to make possible offenders think twice before acting!

D. Orientations

Commanders are responsible for disciplining members of their command. Accordingly, every effort must be made in informing them of what they may or may not do. In the black market arena, they are responsible for ensuring that the applicable regulations are known even though by law, all are presumed to have knowledge of general regulations. There are many ways to violate these rules. Steps must be taken to inform soldiers of those ways, despite that presumption.

Soldiers arriving in Korea are informed of the perils of black marketing. Orientations at personnel replacement centers and replacement companies give special attention to the problem. In the 2d Infantry Division, judge advocates and military police authorities include information on black marketing as part of the soldier's legal orientation. This orientation includes discussion of prohibited acts and common ways soldiers can be enticed in committing the offense. It must be

realized however, that these soldiers, suffering from jet lag, probably do not give their full attention to such "different than back home" matters. Thus, it is doubtful if the advice is heeded if even heard. The chances of them reading the regulation are remote to none. Therefore, additional efforts must be made to continue their orientation. One way to accomplish this is publishing news articles on black marketing in the command newspaper or daily bulletin. Also, command information classes offer a positive way to "spread the word."

Judge advocates, law enforcement personnel, commanders and other selected individuals can assist in improving orientations on black marketing, individually or collectively. Establishing a preventive law team or law enforcement awareness team, traveling to the units rather than the soldiers coming to them, pays big dividends. Such teams have an excellent opportunity to not only orient and inform soldiers about black marketing but also to stress how to avoid other criminal temptations. ²⁷

This three pronged approach in getting word to soldiers aids in the deterrence effort. The key is to take advantage of every opportunity in helping soldiers to stay out of trouble. Better knowledge of how easy it is to become involved in black marketing and how to avoid the traps is essential to any preventive program.

V. Conclusion

Black marketing is an economic crime that has followed the armed forces for over forty years. Where military personnel have access to negotiable goods and the local population has money, items of value, or services to render, there will likely be black marketing.

The military tries to prevent or deter its members from engaging in black market activities. In Korea, the magnitude of the offense demands continued attention. The efforts by U.S. Forces Korea authorities are chartered on the right course in successfully deterring offenders. By understanding what is black marketing and who engages in black market activities, further steps can be taken by all jurisdictions in developing a prevention program.

Further, where regulations are issued to control rationed and duty free goods, they must be aggressively enforced. Daily purchases must be reported timely to prevent abuse of privileges and methods verifying purchase authorization or privileges must be at the fingertips of the retail facility. Soldiers must protect the privilege and understand that any abuse of the privilege can result in the loss of that privilege.

This crime should not be ignored or accepted as a way of life. It deserves continued law enforcement attention, command emphasis, vigorous prosecution and host country involvement.

Joint military police and criminal investigation division agents working together can substantially deter offenders by exercising enhanced detective methods. Command information programs, including

crime prevention teams traveling to units, warn soldiers of the ways of becoming entangled in the web of black marketing. They give soldiers a shield of knowledge to use against the enticements offered by this offense. Finally, host nations, especially Korea, need to enforce their own laws and punish their own civilian violators appropriately. After all, the military ration control system exists solely to enforce Korean customs laws.

Taken together or separately, adopting these considerations for deterring offenders should help in bringing about the demise of black marketing.

ENDNOTES

1. The author's experience and experiences relayed to him by others in prosecuting or defending accused charged with this crime forms a basis for this statement.

2. This figure represents the percentage during the author's tenure as Staff Judge Advocate, 2d Infantry Division. Quarterly meetings discussing military justice with other staff judge advocates produced similar percentages.

3. West's Commercial Law Dictionary

4. Marshall B. Clinard, The Black Market, p. 14.

4a. See, Vol.3., Funk and Wagnall's New Encyclopedia, 1979

4b. Supra Note 4

5. Ibid., p. 2.

6. Clifton D. Bryant, Khaki-Collar Crime, p. 84. This book and the book written by Marshall Clinard were helpful in tracing the history.

7. Interview with William G. Eckhardt, COL JAGC, US Army War College, Carlisle Barracks, Pennsylvania, January 1986.

8. US Forces Korea Regulation, USFK Regulation Number 27-5, 25 October 1983 (hereafter referred to as USFK Reg 27-5).

US Forces Korea Regulation, USFK Regulation Number 60-1, 25 February 1985 (hereafter referred to as USFK Reg 60-1).

US Forces Korea Regulation, USFK Regulation Number 643-1, 4 May 1982 (hereafter referred to as USFK Reg 643-1).

US Forces Korea Regulation, USFK Regulation Number 643-2, 4 May 1982 (hereafter referred to as USFK Reg 643-2).

9. Agreement between the United States and the Republic of Korea Status of Forces Agreement, July 19, 1966 (hereafter referred to as US-ROK SOFA), Art. IX.

10. See also USFK 60-1, para. 39. Accused have attacked these provisions at court-martial arguing that they require self-incrimination without adequate warnings under the UCMJ, art 31. The counter argument is that these provisions legally establish a duty connected with the privilege and not unconstitutional. There are no published opinions by the military appellate courts affirming the attacks. Military Trial

judges, however, have agreed with the accused in some instance. Further discussion of this issue is reserved for another time.

11. For a listing of these prohibited acts and the acts prohibited by USFK Reg 27-5 see Appendix A.

12. See Uniform Code of Military Justice arts. 92, 10 U.S.C. 892 (hereafter referred to as UCMJ).

13. See UCMJ arts. 108 and 121, 10 U.S.C. 908 and 921.

14. John R. Thornock, COL, JAGC, Staff Judge Advocate, INSCOM, Arlington Hall Station, Arlington, Virginia, letter to author, March 6, 1986.

Raymond M. Saunders, CPT, JAGC, The Judge Advocate General's School, letter to author, February 19, 1986.

John M. Fitzpatrick, CPT JAGC, The Judge Advocate General's School, letter to author, February 12, 1986.

Stewart C. Hudson, CPT JAGC, The Judge Advocate General's School, letter to the author March 11, 1986.

Colonel Thornock previously served as Staff Judge Advocate US Forces Korea, from May 1983 until May 1985. The other officers served in Korea as prosecutors prior to their assignment to Charlottesville in July 1985.

15. US-ROK SOFA, art XXII.

16. Supra note 14.

17. Ibid.

18. USFK Form 73, US Forces Korea Ration Control Plate.

19. USFK Reg 60-1, para. 32.

20. USFK Reg 60-1, para. 39a, USFK Reg 27-5, para. 19a(5) and 19a (10).

21. USFK Reg 60-1, para. 39b, USFK Reg 27-5, para. 19a (2)

22. Supra, N. 1.

23. See USFK Reg 60-1, paras. 20, 21.

24. USFK Reg 60-1, paras. 30.

25. The author's personal experience as SJA, 2d Infantry Division, Camp Casey, Korea.

26. UCMJ, art 92.

27. In the early spring of 1985, the provost marshal, 2d Infantry Division, established a law enforcement awareness team. This team, consisting of MP, CID, and JAG representatives, traveled throughout the division area, educating soldiers on crime prevention and detection. Commanders supported this concept enthusiastically.

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